

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-against-

REZA OLANGIAN,

Defendant.

12 Cr. 798 (LAP)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

The Court is in receipt of Defendant's letter dated February 10, 2021 (dkt. no. 162) which requests that the Court (i) appoint Mr. Olangian counsel to assist him with the preparation of a petition pursuant to 28 U.S.C. § 2255 and (ii) extend his time to file a § 2255 petition due to a series of COVID-19-related "lock downs" at the correctional facility in which Mr. Olangian is housed.

In Green v. United States, the Second Circuit held that "a district court may grant an extension of time to file a motion under section 2255 only if (1) the moving party requests the extension upon or after filing an actual section 2255 motion, and (2) 'rare and exceptional' circumstances warrant equitably tolling the limitations period." 260 F.3d 78, 82-83 (2d Cir. 2001); see also Gonzalez v. United States, ECF 1:15-CV-8831, 2018 WL 5023941, at *3 (S.D.N.Y. Oct. 17, 2018) ("Because a federal court 'lacks jurisdiction to consider timeliness of a § 2255 motion until [it] is actually filed,' an extension may be

granted only after an 'actual [§] 2255' petition is filed." (quoting United States v. Leon, 203 F.3d 162, 164 (2d Cir. 2000)).

Because Mr. Olangian has not filed a § 2255 petition, the Court lacks jurisdiction to consider his request for an extension of time. Mr. Olangian may request an extension, and the Court may consider it, "upon or after filing" of his § 2255 petition. Green, 260 F.3d at 82. The motion must "specify all the grounds for relief which are available to [Mr. Olangian] and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified." Id. at 83. At such time, the Court also will consider any request by Mr. Olangian for appointment of counsel.

The Clerk of the Court shall mail a copy of this order to Defendant.

SO ORDERED.

Dated: New York, New York
March 3, 2021



LORETTA A. PRESKA
Senior United States District Judge